131-392

Supreme Court of the United States.

OCTOBER TERM, 1888.

In Equity. No. 1014.

GEORGE W. RADFORD, ASSIGNEE, &C., APPELLANT,

vs.

AGNES FOLSOM, ADMINISTRATRIX, ET AL.

ON MOTION TO DISMISS APPEAL.

H. H. TRIMBLE,
JOSEPH G. ANDERSON,
Of Counsel.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

In Equity. No. 1014.

GEORGE W. RADFORD, ASSIGNEE, &c., APPELLANT,

vs.

AGNES FOLSOM, ADMINISTRATRIX, ET AL.

ON MOTION TO DISMISS APPEAL.

Additional Extracts from the Decree of October 10, 1885.

Record, page 320: "And it is further ordered, adjudged, and decreed that all that remains of the complainant's bill be dismissed upon the merits, at plaintiff's costs."

Record, pages 321, 322: "And it is further ordered, adjudged, and decreed that neither the defendants, personally, nor any of them, nor the property in controversy, nor any of it, are in anywise liable for the payment of any sums whatever arising under any of the matters referred, by the decree made and entered herein at the March term, A. D. 1884, of this court, to P. T. Lomax the standing master in chancery of this court; and it is further ordered, adjudged, and decreed that the complainant therefore has no right, title, interest, or estate in or to or claim or lien upon or or against any of the real estate described in the complainant's bill of complaint, being" (here follows a description of the real estate).

Record, page 331: "And the complainant prays an appeal from the foregoing decree; which appeal is by the court hereby allowed."

Argument in Reply.

I.

When this motion was called up the first time, two weeks ago, counsel for appellant objected to its consideration and refused to file an argument on the ground that the record had not been printed. We then suggested that we had caused the clerk to print the material parts of the record, and had filed such printed parts as part of the motion papers. This was sufficient under the rule.

National Bank *vs.* Insurance Co., 100 U. S., 43;
Waterville *vs.* Van Slyke, 115 U. S., 290.

Accordingly counsel for appellant have now printed some additional extracts from the record and have filed an argument against the motion, in which they make no objection to the consideration of the motion on the ground that the record is not printed. The Court now has before it in printed form all that counsel on either side think is material to this motion.

II.

In resistance to our motion counsel make the point that this decree did not *go into effect* until 90 days after its rendition.

If this were true it would not avail them. Under the statute the two years' limitation begins to run not from the *taking effect* of the decree, but from "the *entry* of such decree" (Rev. Stat. U. S., sec. 1008; Scarborough *vs.* Pargood, 108 U. S., 567.)

We suppose the statute means what it says. The extract from page 317 of the record printed by us shows that this decree was entered of record October 10, 1885, and this is not controverted by the other side. The case is therefore within the very language of the statute and the appeal, not

having been taken within two years from the *entry* of the decree, should be dismissed.

Moreover, there is good reason why the statute should fix the entry of record of the decree and not its being signed or taking effect or any other time. Certainty is always an important consideration in matters of this kind. The time of the entry of record of the decree is always a matter that can be ascertained with absolute certainty by a mere inspection of the face of the record, so that no man need err. The statute rests upon the same reason as does the rule established by this Court, that a writ of error or appeal takes its date from the time of filing the papers in the court below, and not from the time of the granting of the writ or allowance of the appeal. The rule contended for by appellant's counsel would raise a large crop of questions as to the taking effect of judgments and decrees, and would introduce doubt and uncertainty where now there is perfect certainty. The statute is perfectly clear and has no need of construction.

III.

1. But it is not true that this decree did not take effect until ninety days after its rendition. It is an ordinary decree *in præsenti*. The fact that it gives the complainant the chance to *pay off* a part of the decree within ninety days in certain notes and incumbrances instead of cash does not affect the going into effect of the decree. Suppose the limitation of ninety days had been left out and the complainant had been permitted without limitation to pay off part of the decree in the mode specified, would counsel contend in that case that the two years' limitation upon appeals would never begin to run, and that an appeal might be taken at any time thereafter?

Take the case of a decree for specific performance, where the defendant is ordered to convey property to plaintiff within ninety days, in default of which a commissioner is

directed to make the conveyance. Would counsel contend that such a decree did not take effect until ninety days after its rendition, and that an appeal could be taken from it two years and ninety days after its entry of record?

2. The decree for the payment of $14,645.32 is one of the least important parts of the decree appealed from. This was a suit for the foreclosure of a mortgage upon which plaintiff claimed that there was due somewhat over $100,000. The real estate in controversy, of which there was a large amount, was about equal in value to the amount claimed. Its description alone occupies some six pages of the decree in the record. The most important part of the decree is that which holds that there is nothing due plaintiff on the alleged mortgage debts, and that plaintiff has no right, title, or interest in or to or lien upon the said real estate, and dismisses the bill upon the merits at plaintiff's costs. This part of the decree certainly took effect at once, and the two years' limitation at once began to run.

3. The right to issue execution immediately, which was expressly given by the decree, is not inconsistent with the opportunity which is given plaintiff to pay off a part of the money decree "by the production and cancellation or discharge of said incumbrances and notes in such manner as to terminate all liability thereon." If the plaintiff had these incumbrances and notes he could produce them at any time, and it behooved him to do so in time to prevent execution. It does not appear that he had them or had ever had them. As this Court said in a case where precisely similar directions were made in a decree: "Plainly they were not intended to prevent the enforcement of the decree by executions against the administrator, for such executions were expressly allowed."

Stovall *vs.* Banks, 10 Wallace, 583–587.

IV.

Counsel say: "It was intended to give the parties two full years from the time their liability was *conclusively fixed* by a decree in which to appeal." It seems to be the view of counsel that the liability of plaintiff was not *conclusively fixed* by the decree of October 10, 1885. If this were so the result would be not that the liability became conclusively fixed by the expiration of ninety days, but that the decree of Ocber 10, 1885, was not final and therefore could not be appealed from. This of itself would be good reason to sustain our motion. The decree of October 10, 1885, was final and conclusive when it was made or it was not. If it was then final and conclusive it could be appealed from at once, and the two years' limitation at once began to run, and had completely run before the present appeal, which must therefore be dismissed. If it was not final and conclusive when it was made it could not become so by mere lapse of time and cannot be appealed from at all, and the appeal must be dismissed for that reason.

V.

The appellant recognized the fact that the decree took effect when it was made and entered of record by appealing from it at once. The praying and allowing of the former appeal (which was dismissed by the court at the last term, Radford *vs.* Folsom, 123 U. S., 725) was noted in the decree itself. (See our additional extracts from the decree of October 10, 1885, printed herewith.) By thus appealing immediately the appellant vested the jurisdiction of the cause in this Court and deprived the court below of any power to proceed further. By so doing he elected to waive and deprive himself of the benefit of the ninety-day clause. He cannot now therefore claim any benefit therefrom, particularly as he does not show that he ever had any such notes and incumbrances as are therein specified, or that he ever

produced or offered to produce same to be canceled or discharged.

Stovall *vs.* Banks, 10 Wallace, 583–585.

VI.

Counsel urge the allowance of the appeal by the late Chief Justice Waite, after consultation with Mr. Justice Miller, as a reason for overruling this motion. That allowance was *ex parte*. We had no opportunity to be heard and we are sure that it was not intended in allowing the appeal to decide this question finally, but it was only intended to put it in such a shape that it might be decided after proper argument.

Counsel also mention the diligence of complainant in his efforts to get his case here; but it was for the very reason that he was not diligent but negligent that the former appeal was dismissed.

We suppose that the fact that complainant and his present counsel regard the decree as wholly unwarranted by the evidence and law ought not to be conclusive of the present motion. The case was very carefully considered below by Judges Love and Shiras, whose opinions are in the record, and the details of the accounts, &c., received a searching examination by Hon. P. T. Lomax, the standing master in chancery. Perhaps their opinion of the case, embodied in the reports, opinions, and decrees in the record, may be worth nearly as much for the present purpose as thoss of complainant and his present counsel. We submit that the appeal should be dismissed.

Respectfully submitted.

H. H. TRIMBLE,
JOSEPH G. ANDERSON,
Of Counsel.

FILED.
NOV 21 1888
JAMES. H. McKENNEY.
CLERK.

IN THE SUPREME COURT OF THE UNIED STATES,

OCTOBER TERM, 1888.

GEORGE W. RADFORD, *assignee of* SIMEON AND FRANK FOLSOM,

vs.

AGNES FOLSOM, *administratrix of* JEREMIAH FOLSOM, *deceased et al.*

No. 1014.

Additional Extracts from the Record, not printed by Appellees.

Decree, October 10, 1885, Record pages 319, 320, 321.

"The Court doth further adjudge and decree that there is due from the plaintiff to the defendant, Agnes Folsom, as administratrix of the estate and effects of Jeremiah Folsom, deceased, the sum of fourteen thousand six hundred and forty-five dollars and thirty-two cents, with interest thereon from the twentieth day of December, A. D. 1884, at the rate of six per cent. per annum, being the amount of rents received by the receiver in the cause in the State court mentioned in the said report with interest less taxes, and the Court doth adjudge and decree that the complainant, George W. Radford, as assignee in bankruptcy of the estate and effects of Simeon Folsom and Frank Folsom, bankrupts, pay to the defendant, Agnes Folsom, as administratrix of the estate and effects of Jeremiah Folsom, deceased, the

said sum of fourteen thousand six hundred and forty-five dollars and thirty-two cents ($14,645.32) with interest thereon at six per cent. per annum, from the twentieth day of December, A. D. 1884, and that execution issue therefor."

* * * * * *

"And it is further ordered, adjudged and decreed, that if the complainant shall satisfy the Court, within ninety days from this date" (that date being October 10, 1885), "that the amounts paid by Simeon Folsom for the purchase of the incumbrances and notes specified in the master's report, and particularly in Schedules No. 1 and 2 thereto, amounting, in the aggregate, to fourteen thousand and eighty-four dollars and seventy-seven cents ($14,084.77), or any part thereof, have enured to the benefit of Jeremiah Folsom, or his estate, by the production and cancellation or discharge of said incumbrances and notes, in such manner as to terminate all liability thereon, then, and in such case, there shall be credited on the amount hereinbefore ordered to be paid by the complainant the amount of such incumbrances and notes so produced and cancelled or discharded."

Then follows a decree involving title to sundry tracts of land in Iowa, covering six pages of the record in description.

Argument.

This decree must be construed as an entirety. Taken as a whole, it shows that it was not to go into effect until the period of ninety days had expired from the time of its rendition. It first provides that the sum of $14,645.32 shall be paid by the complainant to the administratrix of Jeremiah Folsom, deceased, and that execution shall issue therefor. It then proceeds to provide that the complainant

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1014.

GEORGE W. RADFORD, ASSIGNEE IN BANKRUPTCY OF SIMEON FOLSOM AND FRANK FOLSOM, APPELLANT,

vs.

AGNES FOLSOM, ADMINISTRATRIX OF JEREMIAH FOLSOM, DECEASED; JONAS B. BLAKE, ADMINISTRATOR DE BONIS NON, &C., OF SARAH M. FOLSOM, DECEASED; AGNES FOLSOM, ADELE FOLSOM, ET AL.

Extracts from the Transcript of Record.

* * * * * * *

(Page 317:) Afterwards, on the 10th day of October, A. D. 1885, there was filed in the office of the clerk of this court and entered of record herein a final decree in words and figures following, to wit:

* * * * * * *

(Page 389*c*:) Be it remembered that on the 3d day of January, A. D. 1888, there was filed in the office of the clerk of the circuit court of the United States in and for the southern district of Iowa, western divison thereof, in a cause appearing upon the dockets thereof, wherein one Geo. W.

Radford, assignee in bankruptcy of Simeon and Frank Folsom, bankrupts, was complainant, and Agnes Folsom, administratrix of the estate of Jeremiah Folsom, deceased, *et al.* were respondents, a certain citation and appeal bond, which were in words and figures following, to wit:

"The United States of America to Agnes Folsom, as administratrix of Jeremiah Folsom, deceased; Jonas B. Blake, as administrator *de bonis non* of Sarah M. Folsom, deceased; Agnes Folsom, Adell Folsom, Florence Folsom, George B. Folsom, Ward P. Folsom; Jonas B. Blake, guardian of Adell Folsom and George B. Folsom, minors; Agnes Folsom, guardian of Ward P. Folsom, Samuel F. Folsom, Rachel L. Folsom; Lewis W. Ross, Joe M. Ross; Edward W. Davenport, assignee in bankruptcy of Samuel F. Folsom, a bankrupt, and A. S. Bryant, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2d day of October next, pursuant to an appeal to the Supreme Court of the United States by George W. Radford, assignee in bankruptcy of Simeon and Frank Folsom, bankrupts, from a decree rendered against him on the tenth day of October, 1885, for fourteen thousand and eighty-four dollars and seventy-seven cents ($14,084.77) and costs of suit by the circuit court of the United States for the southern district of Iowa in a cause wherein he, the said George W. Radford, assignee in bankruptcy as aforesaid, was complainant and you were respondents, and to show cause, if any there be, why the said decree rendered against the said complainants should not be corrected and why speedy justice should — be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

(Signed) M. R. WAITE.

On this 30th day of December, in the year of our Lord one thousand eight hundred and eighty-seven, personally appeared Frank E. Smith before me, the subscriber, a notary public in and for the District of Columbia, and makes oath that he this day sent by mail, by registered letter No. 8027, deposited in the post office at Washington, District of Columbia, a true copy of the within citation, directed to Jos. G. Anderson, att'y-at-law, Keokuk, Iowa.

FRANK E. SMITH.

Sworn to and subscribed this 30th December, A. D. 1887.

E. L. WHITE,
Notary Public, D. C.

Service of the within and foregoing instrument, by copy, is hereby acknowledged this 3d day of January, A. D. 1888, reading thereof being waived.

(Signed) W. S. MAYNE,
Of Counsel for Respondents.

Filed January 3d, 1888.

H. K. LOVE, *Clerk.*

Know all men by these presents that we, Walter H. Smith and Frank E. Smith, are held and firmly bound unto Agnes Folsom, administratrix of Jeremiah Folsom, deceased; Jonas B. Blake, administrator *de bonis non* of Sarah M. Folsom, deceased; Agnes Folsom, Adell Folsom, Florence Folsom, George B. Folsom, Ward P. Folsom, Jonas B. Blake, guardian of Adell Folsom and George B. Folsom, minors; Agnes Folsom, guardian of Ward P. Folsom, Samuel F. Folsom, Rachel L. Folsom; Lewis W. Ross, Joe M. Ross; Edward W. Davenport, assignee in bankruptcy of Samuel F. Folsom, a bankrupt, and A. S. Bryant, in the full and just sum of five hundred dollars ($500.00), to be paid to the above-named parties, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we

bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirtieth day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas an appeal to the Supreme Court of the United States has been taken by George W. Radford, assignee in bankruptcy of Simeon and Frank Folsom, bankrupts, from a decree rendered against him on the 10th day of October, 1885, for fourteen thousand and eighty-four dollars and seventy-seven cents ($14,084.77) and costs of suit by the circuit court of the United States for the southern district of Iowa in a cause wherein he, the said George W. Radford, as assignee in bankruptcy as aforesaid, was complainant and the above-named parties were respondents; and

Whereas a citation, directed to the above-named respondents, has been issued citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second day of October next:

Now, the condition of the above obligation is such that if the said George W. Radford, as assignee as aforesaid, shall prosecute the said appeal to effect and answer all costs if he fail to make his appeal and plea good, then the above obligation to be void; else to remain in full force and virtue.

WALTER H. SMITH. [SEAL.]
FRANK E. SMITH. [SEAL.]

Sealed and delivered in presence of—
F. S. SMITH.

Approved by—

M. R. WAITE,
Chief Justice U. S.

Dec. 30th, 1887.

Filed Jan. 3d, 1888.

H. K. LOVE, *Clerk.*

* * * * * * *

shall have ninety days from the date of the decree in which to satisfy the Court that the sum of $14,084.77, or any part thereof, had been applied by Simeon Folsom for the purchase of certain incumbrances and notes therein specified, and had inured to the benefit of the said Jeremiah Folsom, or his estate, then such amount "*shall be credited on the amount hereinbefore ordered to be paid by the complainant.*"

That amount was the $14,645, 32 above stated. It is manifest that this could not be done if the decree took effect from its date, for its payment might have been coerced by the issuing of an execution, before the expiration of the 90 days.

If the decree had expressly provided that it should not take effect until the expiration of 90 days from its date, we think there can be no doubt but that the two years of limitation would not begin to run until the expiration of that period. The statute should receive a construction that will carry out its spirit rather than its letter. It was intended to give the parties two full years from the time their liability was conclusively fixed by a decree in which to appeal, and, inasmuch as decrees generally take effect from the time they are entered, the statute nses the expression of "two years after the entry of such decree."

This was the view urged upon the late Chief Justice Waite when he was requested to allow the appeal, and, after consultation with Mr. Justice Miller, he did allow the appeal.

This complainant has been diligent in his efforts to get rid of what he and his present counsel regard as a decree wholly unwarranted by the evidence and

law. He filed a transcript in this Court October 15th, 1886. The appeal was dismissed because the transcript was not filed at the October Term, 1885. The decree was rendered October 10, 1885. This Court commenced October 12, 1885. *Radford* v. *Folsom*, 123 U. S., 725. This decision was made December 19th, 1887, and on the 30th of the same month he made this appeal. That was within two years from the time the decree took effect, to wit, 90 days from its rendition. We trust that the present motion to dismiss the appeal will be overruled.

WALTER H. SMITH,
W. F. SAPP,
Att'ys for Appellant.

In the Supreme Court

OF THE UNITED STATES.

OCTOBER TERM 1888.

No. 1014.

George W. Radford, assignee in bankruptcy of Simeon and Frank Folsom, bankrupts,
Appellant.

vs.

Agnes Folsom, as administratrix of Jeremiah Folsom, deceased, Jonas B. Blake, as administrator, *de bonis non*, of Sarah M. Folsom, deceased, Agnes Folsom, Adele Folsom, Florence Folsom, George B. Folsom, Ward P. Folsom, Jonas B. Blake, guardian of Adele Folsom, Florence Folsom and George B. Folsom, minors, Agnes Folsom, guardian of Ward P. Folsom, minor, Samuel F.. Folsom, Rachael L. Folsom, Lewis W. Ross, Zoe M. Ross, Edward W. Davenport, assignee in Bankruptcy of Samuel F. Folsom, a bankrupt, and A. S. Bryant.
Respondents.

In Equity.

No. 763.

Motion to dismiss appeal and argument thereon.

Now come Agnes Folsom, Agnes Folsom, as administratrix of Jeremiah Folsom, deceased, Agnes Folsom, as guardian of Ward P. Folsom, a minor, Jonas B. Blake, guardian of Florence Folsom, Adele Folsom, and George B. Folsom, minors, Jonas B. Blake, administrator of Sarah M. Folsom, deceased, Florence Folsom, Adele Folsom, George B. Folsom, and Ward P. Folsom, Appellees in the above entitled cause and respectfully move the

court to dismiss the appeal in the above entitled cause because the same was not taken within two years after the entry of the decree appealed from and because this court has no jurisdiction of the said appeal.

And they respectfully state to the court, as follows, to-wit:

That the decree appealed from was made and entered of record in the Circuit Court of the United States for the Southern District of Iowa, Western Division, on the 10th day of October, 1885.

That the appeal in the above entitled cause was not taken until the 30th day of December, 1887, more than two years after the entry of the decree, as aforesaid.

Wherefore they move to dismiss the appeal for the reasons aforesaid.

H. H. TRIMBLE,
JOSEPH G. ANDERSON,
Solicitors and Counsel for said Appellees.

ARGUMENT.

The foregoing motion is based on Section 1008 of the Revised Statutes, providing that no decree of a Circuit Court, in Equity, shall be reviewed in the Supreme Court on appeal unless the appeal is taken within two years *after the entry of such decree.*"

That the appeal in this case was taken more than two years after the entry of the decree is plain. The decreed was entered October 10, 1885. The appeal was not taken until December 30, 1887. This is clearly not within two years.

We submit that the appeal should be dismissed.

H. H. TRIMBLE,
JOSEPH G. ANDERSON,
Solicitors and Counsel for said Appellees.

31-394

IN THE

Supreme Court of the United States.

October Term 1888.

THE PACIFIC EXPRESS COMPANY,
Plaintiff in Error,
vs.
SAM MALIN, Defendant in Error.

No. 1203.

Writ of Error to the Circuit Court of the United States for the Western District of Texas.

Motion to Dismiss Writ of Error.

Now comes the defendant in error, by W. Hallett Phillips, his attorney, and moves to dismiss the above writ of error for want of jurisdiction in this court on the ground that the matter in dispute does not exceed the sum or value of $5,000.

W. HALLETT PHILLIPS,
For Defendant in Error.

STATEMENT OF THE CASE.

The defendant in error was plaintiff below, and brought his action at law against the plaintiff in error in the District Court of Mitchell county, Texas, for an injury done to his property by the defendant in error, and claimed damages in the sum of $5,850. An answer was filed by the Express Company. On the 6th January,

1887, the case was removed on the defendant's petition to the Circuit Court of the United States for the Western District of Texas, and there entered as No. 24. Certain proceedings were had in that court, and the case being at issue was tried before a jury on the 12th April, 1888. The following verdict was rendered:

"EL PASO, TEXAS, *April* 12, 1888.

"We, the jury in this case, No. 24, viz., Sam Malin, plaintiff, *v.* The Pacific Express Company, defendant, find for the plaintiff and assess the damages at $3,000."

On the same day judgment was entered for the plaintiff in the sum of $3,000.

On April 13th, 1888, the plaintiff in the judgment, at the suggestion of the court, entered on it a remittitur of $350, thus reducing the judgment from $3,000 to $2,650.

The writ of error was sued out by the plaintiff in error to reverse this judgment.

BRIEF.

To give this court jurisdiction the matter in dispute must exceed $5,000.

18 S. L., 318.

Where the defendant below sues out the writ of error, the matter in dispute is the judgment rendered against him.

Walker *v.* United States, 4 Wall., 163.

The judgment in this case being for $3,000, this court is without jurisdiction.

W. HALLETT PHILLIPS,
For Defendant in Error.

131-3 131-396

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 984.

G. B. LIST, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED MARCH 21, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 984.

G. B. LIST, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 9, 1888.

1 *Copy of Minutes.*

June Sess., A. D. 1887.

COMMONWEALTH
vs.
G. B. LIST. } No. 261.

True bill.

1st count. Acting as agent for foreign insurance company without authority.

2nd count. Transacting business for foreign insurance company without authority.

And now, July 6, 1887, the defendant, being present, in open court pleads *non cul et de hoc;* dist. att'y, *similiter;* issue joined. Same day, a jury being called, there came Patrick Devine, A. Crider, R. H. Jones, J. T. Schitzmyer, T. M. Thomas, Paul Lochner, J. B. Ryan, F. McGinniss, George Manchester, John Fay, J. R. McKelvy, John Brenmen, twelve good and lawful men, duly summoned, returned, elected by ballot, empannelled, and sworn, who, upon their solemn oaths, do respectively say *eo die* that they find the defendant guilty as indicted, and we find the following to be the facts upon which we find our verdict: That G. B. List, the defendant, is and was at the time of tfle alleged offence a citizen and resident of Baltimore, Maryland,

2 and was engaged in representing the Mutual Fire Insurance Company of Baltimore, Md., in the capacity of inspector, his compensation and expenses being paid by said company. Said company was a foreign fire insurance company, incorporated in and by the State of Maryland, and not licensed, and having no authority from the insurance commissioner to do business in Pennsylvania, and had not complied with the laws of Pennsylvania relating to foreign insurance companies. On the 12th day of February, A. D. 1887, said defendant visited the city of Pittsburgh and delivered to business men in said city his card, announcing himself as inspector, together with said company's form of premium note and its financial statement to December 31, 1886, and also a list of its official directors and committees, which card and statement lists are hereto attached and made a part of this statement of facts; that he afterwards visited C. F. Wells, in the city of Pittsburgh, and enquired when his policies of insurance would expire in companies in which said Wells was already insured, and requested permission to inspect the premises of said Wells, and this for the purpose of enabling said Mutual Fire Insurance Company of Baltimore City, Md., to place a policy or policies of insurance thereon; that prior to the visit of defendant to the city of Pittsburgh Messrs. Reed and Edwards re-

ceived a letter from the secretary of said company, dated

3 February 3, 1887, which letter is hereto attached and made a part of this statement of facts; that defendant was sent to the city of Pittsburgh by said company for the purpose of inspecting

buildings, ascertaining their exposure, and making diagrams of the same with respect to their desirability as insurance risks for acceptance by said Mutual Fire Insurance Company of Baltimore, Maryland, and that he went to the said Wells and others, in the city of Pittsburgh, for said purpose. It is further admitted that on the day and year last aforesaid the defendant inspected the Franklin Glue Works, a building in the county of Allegheny, in the State of Pennsylvania, for the purpose aforesaid; that he promptly thereafter transmitted a report of said inspection to said company, which company immediately thereafter, for a premium paid to it, placed upon the said glue works said company's policy of insurance against loss by fire; that in pursuance of said employment as inspector on the day and year last aforesaid defendant was engaged in the city of Pittsburgh in inspecting risks for the purpose aforesaid, and transmitted reports of his inspection to said company in Baltimore.

It is further admitted that his actions were confined entirely to the said business inspection, and that he did not negotiate or solicit within the State any contract of insurance or pretend to effect
4 the same, or receive or transmit any offer or offers of insurance, or receive or deliver a policy, or in any manner aid in the business of placing insurance, except as hereinbefore set forth in this statement of facts.

Eo die the court sentenced the defendant, he being present in open court, to pay a fine of $500 to com. and pay the costs of pros.

Eo die motion for a new trial and in arrest — judgment filed.

Eo die motion overruled by the court.

Eo die demurrer filed.

Eo die defendant's points filed and refused and bill sealed for defendant.

And now, July 13, 1887, petition of G. B. List for an allocator filed. Same day, writ of error allowed by Silas M. Clark, justice of the supreme court, by defendant entering into recog. in the sum of $1,000 before one of the judges of the quarter session court of Allegheny county to abide the order in judgment as shall be pronounced in said court of quarter sessions.

July 19, 1887, writ of error from supreme court filed.

July 23rd, 1887, recognizance in sum of one thousand dollars approved by court of quarter sessions of Allegheny county filed.

5 STATE OF PENNSYLVANIA, }
County of Allegheny, City of Pittsburgh, } *ss:*

COMMONWEALTH OF PENNSYLVANIA *vs.* G. B. LIST.

Before me, the subscriber, James V. McMasters, an alderman in and for said city, personally came J. B. McFadden, who, upon oath administered according to law, deposes and says that at Pittsburgh, in the county of Allegheny, on the 12th day of February, A. D. 1887, *that* the defendant aforesaid did then and there and at other times, acting as the agent for the Mutual Fire Insurance Company of Baltimore City, *did* unlawfully negotiate or solicit within this Commonwealth contracts of insurance and did aid in the transaction of the

business of insurance without having received authority agreeable to law for that purpose.

Complainant therefore prays and desires that a warrant may issue and the aforesaid defendant, G. B. List, may be arrested and held to answer the charge of transacting a business prohibited by law; and further deponent saith not.

6 J. B. McFADDEN.

Sworn to and subscribed before me this 12th day of February, A. D. 1887.

JAMES V. McMASTERS, *Alderman.* [SEAL.]

Prosecutor tent. in $50 sub., con. to appear at and throughout March sessions of court of quarter sessions of said county to testify, &c.

Taken before me this 16th day of February, 1887.

J. V. McMASTERS. [SEAL.]

March Term, A. D. 1887.

We and each of us, G. B. List and W. P. Potter, do acknowledge ourselves jointly and severally indebted to the Commonwealth of Pennsylvania in the sum of five hundred dollars, lawful money of the United States of America, to be levied of our and each of our lands and tenements, goods and chattels, conditioned that the said G. B. List shall be and appear at the March term of court of oyer and terminer and quarter sessions for the county of Allegheny, on the first Monday of March, 1887, at the city of Pittsburgh, then and there to answer the above charge of —— ——, as may be preferred against the said G. B. List, and shall abide and not depart the court without leave, and shall, in the meantime, keep the peace

7 and be of good behavior towards all citizens of the Commonwealth and more especially towards complainant.

G. B. LIST. [SEAL.]
W. P. POTTER. [SEAL.]

Taken and acknowledged before me this 16th day of February, A. D. 1887.

JAMES V. McMASTERS, *Alderman.*

Bail found at ——.
Property located ——.

8 *Charge: Transacting a Business Prohibited by Law.*

COMMONWEALTH *vs.* G. B. LIST.

Warrant issued to A. A. Heiner, constable, February 12, 1887, on oath of J. B. McFadden.

And now, February 16, 1887, prosecutor tent. in $50 sub., con. that the complainant, J. B. McFadden, will appear at the next court of quarter sessions to testify, &c.

And now, February 12, 1887, G. B. List, the defendant, is arrested and brought to office and in default of bail committed for a hearing

on February 16, 1887; and now, Feb. 16, 1887, parties appear and a hearing is held. After hearing defendant is held in the sum of five hundred dollars for his appearance at March term of court, and W. P. Potter becomes bail, conditioned for defendant's appearance to answer, &c.

CITY OF PITTSBURGH, } *ss*:
County of Allegheny, }

I, an alderman in and for said city, certify that the above
9 is a true transcript from my docket, and that the recognizances were duly taken and acknowledged before me as aforesaid.

In witness whereof I hereunto set my hand and seal, at the city of Pittsburgh, this 16th day of February, A. D. 1887.

JAMES V. McMASTERS, *Alderman.* [SEAL.]

10 ALLEGHENY COUNTY, *ss*:

Court of Quarter Sessions of the Peace for the County of Allegheny, of June Sessions, A. D. 1887.

The grand inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the county of Allegheny, upon their oaths and solemn affirmations, respectively, do present that G. B. List, late of the county aforesaid, yeoman, on the twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-seven, in the county aforesaid and within the jurisdiction of this court, with force and arms did then and there unlawfully transact business within this Commonwealth as the agent of an insurance company of another State, to wit, as the agent of the Mutual Fire Insurance Company of Baltimore, in the State of Maryland, without having first procured a certificate of authority so to act from the insurance commissioner of this Commonwealth, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the inquest aforesaid, upon their oaths and solemn affirmations aforesaid, do further present that the said G. B. List, on
11 the day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, unlawfully did then and there receive premiums and forward applications and otherwise transact business for an insurance company and association not of this State, to wit, for the Mutual Fire Insurance Company of the City of Baltimore, in the State of Maryland, without having received authority agreeably to law for that purpose, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

W. D. PORTER,
Dist. Att'y for Allegheny Co.
JOS. G. SINTERNECK, *Foreman.*

Test: *Pro Respub.*

Sworn by me—

J. B. McFADDEN.

12 The court is respectfully asked to charge the jury—

1st. That if they find from all the evidence in this case that the only business transacted by defendant, G. B. List, for an insurance company of another State consisted in making an examination and inspection of buildings with reference to their desirability as risks and reporting the facts there can be no conviction under the law, and it is their duty to acquit the defendant.

Refused, and bill sealed for defendant.

F. H. COLLIER. [SEAL.]

2nd. That if the jury find from all the evidence in the case that the defendant did not quote rates or solicit insurance, or receive premiums or forward the same, or perform any of the duties of an insurance agent, but that defendant's action was confined wholly to inspecting and examining the physical and material condition of buildings, such action was not the "aiding in the placing of insurance" prohibited by the law, and there can be no conviction.

Refused, and bill sealed for defendant.

F. H. COLLIER. [SEAL.]

3rd. That there can be no conviction in this case, for the reason that the act of Assembly under which the indictment is

13 framed is obnoxious to the Constitution of the United States, being an attempt on the part of the State to regulate commerce among the several States, which is in conflict with art. 1st, sec. 8, declaring that "Congress shall have power to regulate commerce among the several States;" also with art. 4, sec. 2, declaring that "Citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States;" and also with the 14th amendment, which declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Refused, and bill sealed for defendant.

F. H. COLLIER. [SEAL.]

14 June Sessions, 1887.

COMMONWEALTH *vs.* GEORGE B. LIST. } No. —.

And now, to wit, July 6th, 1887, on leave of court, motion for a new trial and in arrest of judgment, for the reasons assigned on motion to quash indictment filed, thereby made a part of this motion.

MOORE & POTTER,
Attorneys for Defendant.

And now, to wit, *eo die*, motion overruled, by the court:

15 *Statement of Facts.*

In the Court of Quarter Sessions of Allegheny Co.

THE COMMONWEALTH OF PENNSYLVANIA *vs.* G. B. LIST.

Counsel for the Commonwealth and for defendant in the above-entitled case hereby agree upon the following statement of facts, to be read in evidence upon the trial of the above-entitled case:

And we find the following to be the facts upon which we find our verdict: That G. B. List, the defendant, is and was at the time of the alleged offence a citizen and resident of Baltimore, Maryland, and was engaged in representing the Mutual Fire Insurance Company of Baltimore, Maryland, in the capacity of inspector, his compensation and expenses being paid by said company. Said company was a foreign fire insurance company, incorporated in and by the State of Maryland, and not licensed, and having no authority
16 from the insurance commissioner to do business in Pennsylvania, and had not complied with the laws of Pennsylvania relating to foreign insurance companies.

On the 12th day of February, 1887, said defendant visited the city of Pittsburgh and delivered to business men in said city his card, announcing himself as inspector, together with said company's form of premium note and its financial statement to December 31st, 1886, and also a list of its official directors and committees, which card and statement and list are hereto attached and made a part of this statement of facts.

That afterward the defendant visited C. F. Wells in the city of Pittsburgh and enquired when his policies of insurance would expire in companies in which said Wells was already insured, and requested permission to inspect the premises of said Wells, and this for the purpose of enabling said The Mutual Fire Insurance Company of Baltimore City, Md., to place a policy or policies of insurance thereon.

That prior to the visit of defendant to the city of Pittsburgh Messrs. Reed and Edwards received a letter from the secretary of said company, dated February 3, 1887, which letter is hereto attached and made a part of this statement of facts.

17 That defendant was sent to the city of Pittsburgh by said company for the purpose of inspecting buildings, ascertaining their exposures, and making diagrams of the same with respect to their desirability as insurance risks for acceptance by said Mutual Fire Insurance Company of Baltimore, Maryland, and that he went to said Wells and others in the city of Pittsburgh for said purpose.

It is further admitted that on the day and year last aforesaid defendant inspected the Franklin Glue Works, a building in the county of Allegheny, in the State of Pennsylvania, for the purpose aforesaid; that he promptly thereafter transmitted a report of such inspection to said company, which company immediately thereafter,

for a premium paid to it, placed upon said glue works said company's policy of insurance against loss by fire.

That, in pursuance of his said employment as inspector on the day and year last aforesaid, defendant was engaged in the city of Pittsburgh in inspecting risks for the purpose aforesaid and transmitted reports of his inspection to said company in Baltimore.

It is further admitted that his actions were confined entirely to the said business of inspection, and that he did not negotiate
18 or solicit within this State any contract of insurance or pretend to effect the same, or receive or transmit any offer or offers of insurance, or receive or deliver a policy, or in any manner aid in the business of placing insurance except as hereinbefore set forth in this statement of facts.

W. D. MOORE,
W. P. POTTER,
Counsel for Defendant.
R. H. JOHNSTON,
C. C. DICKEY,
Counsel for the Commonwealth.

19 (*Card.*)

G. B. List, inspector of the Mutual Fire Ins. Co. of Baltimore, 33 S. Gay St., Baltimore, Md.

(On back of card:)

Mr. McCulloch, clerk ins. department, Harrisburg.

Mutual Fire Insurance Co. of Baltimore City, 33 South Gay Street (Marine Bank Building), Baltimore, Md.

Assets:

Baltimore city stock, 5's, par value, $8,000; market value	$10,208 50	$10,208 50
Accrued interest	66 66	
Cash in First Nat. Bank	802 70	
Cash in office	8 22	
Premiums in course of collection	92 50	
Due from other companies and individuals	599 80	
		1,569 88
Office furniture		336 85
		$12,115 23
20 Premiums, notes, net value, deposited in vaults of Safe Deposit Co.	$116,322 75	
Premium note in course of transmission	2,000 00	
		118,322 75
Total		$130,473 98

Liabilities:

Amount necessary to provide for dividend of 23⅓ p. c., declared as of 31st Dec., 1886, under art. XVII & XVIII of the by-laws of the com'y	4,297 17
Surplus above liabilities	$126,140 81
Losses paid since organization	$2,974 33
Amount at risk	1,170,529 80

(Over.) W. H. PURCELL, *Secretary.*

(Back of list:)

Officers.

W. Stuart Symington ..... President.
Peter B. Hoge ..... Vice-president.
W. H. Purcell ..... Secretary.
A. H. Dillon, Jr. ..... General manager.

21 *Directors.*

W. Stuart Symington ..... Symington Bros. & Co.
Peter B. Hoge ..... The Zell Guano Co.
Frank Slingluff ..... Slingluff & Co.
J. Edwin Myers ..... The Maryland Fer. & Manu. Co.
C. T. Davison ..... G. H. & C. T. Davison.
John A. Hambleton ..... John A. Hambleton & Co.
Charles Glaser ..... Dambmann Bros. & Co.
Geo. W. Crafflin ..... Prop. Lazaretto Ch'm'l W'ks.
Geo. I. Bechtel ..... Lorentz & Rittler.
W. Morris Orem ..... The Popplein Silica Phos. Co.
R. J. Hollingsworth ..... R. J. Baker & Co.
Joshua Horner, Jr. ..... Joshua Horner, Jr., & Co.

All of Baltimore, Md.

Executive Committee.

Frank Slingluff, chairman.
J. Edwin Myers. C. T. Davison.

Finance Committee.

John A. Hambleton, chairman.
Peter B. Hoge. Charles Glaser.

22 June Sessions, 1887.

COMMONWEALTH OF PENNSYLVANIA
vs.
G. B. LIST. } No. 261.

And the said G. B. List, in his own proper person, comes into court here and, having heard the said indictment read, says that

the said indictment and the matter therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said G. B. List, is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment in this behalf, the said G. B. List prays judgment and that by the court he may be dismissed and discharged from the said premises in the said indictment specified.

W. D. MOORE,
W. P. POTTER,
Attorneys for Defendant.

JULY 6TH, 1887.

And now, July 6th, 1887, demurrer overruled and bill sealed for defendant.

F. H. COLLIER. [SEAL.]

23 *Defendant's Brief.*

June Sessions, 1887.

COMMONWEALTH *vs.* LIST. } No. 261.

The grounds upon which demurrer to this indictment is based are that the acts of Assembly under which it is drawn are obnoxious to the Constitution of the United States, article 1st, section 8, "The Congress shall have power to regulate commerce with foreign nations and among the several States;"

Article 4th, section 2nd, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;"

And the 14th amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

And on the broad ground that the people of this country are citizens of the United States as well as of the individual States, and that they have some rights under the Constitution and laws
24 of the former independent of the latter and free from any interference or restraint from them.

Robbins *vs.* Shelby Taxing District, 120 W. L. S. Reports, 490.

The power to regulate commerce is vested exclusively in Congress and cannot be exercised by a State.

Gibbon *vs.* Ogden, 9 Wheat., 1.

It extends to every kind of intercourse between States.

Smith *vs.* Turner (passenger cases), 7 Howard, 283 (307).

A State can no more regulate or impede commerce among the several States than with foreign nations.

Brown *vs.* Houston, 114 W. S., 622.

25 June Sessions, 1887.

COMMONWEALTH OF PENNSYLVANIA
vs.
G. B. LIST. } No. 261.

And now, to wit, July 6th, 1887, the defendant above named, by his attorneys, moves that the indictment be quashed for the following reasons—

Being the same which are assigned in support of the demurrer filed in this case, which reasons are attached to the demurrer and made a part thereof, and also made a part of this motion.

W. D. MOORE,
W. P. POTTER,
Attorneys for Defendant.

Motion overruled and bill sealed for defendant.

F. H. COLLIER. [SEAL.]

26 (*Copy of Letter.*)

BALTIMORE, *Feb'y 3rd*, 1887.

Messrs. Breed & Edwards, Pittsburgh, Pa.

GENTLEMEN: Under our original title, "The Fertilizer M'f'r's Mutual Fire Ins. Co.," we forwarded you circulars during last year explanatory of our system, etc. On the 31st of Dec. last, at a meeting of our policy-holders, it was desermined to change the name of the Co. to "The Mutual Fire Ins. Co. of Baltimore City, as at the head hereof. (The letter is printed on a letter-head of the company's.)

We beg to inclose copy of our by-laws, article XV of which gives the exact form of our premium note, and copy of our financial statement to 31st Dec., 1886, and we have taken the liberty to direct an inspector of this Co. (Mr. G. B. List), who is now in your vicinity, to call upon you, and we trust that you will permit him to inspect your risk with a view to our obtaining a share of your insurance.

Yours, very respectfully,

W. H. PURCELL, *Secretary.*

27 In the Quarter Sessions Court of Allegheny Co. June Sessions, 1887.

COMMONWEALTH OF PENNSYLVANIA
vs.
G. B. LIST. } No. 261.

To the Honorable Silas M. Clarke, justice of the supreme court of Pennsylvania:

The petition of G. B. List, defendant above named, respectfully represents—

That at a court of quarter sessions, &c., held in and for the county aforesaid on the sixth day of July, 1887, he was indicted and con-

victed of the crime of "acting as agent for a foreign insurance company without authority" and "transacting business for foreign insurance company without authority." That same day the motion for a new trial and in arrest of judgment was overruled and petitioner was sentenced to pay a fine of five hundred dollars ($500) and the cost of prosecution or give security to pay same within ten days; that on the trial of your petitioner said court committed the following errors:

28 1st. Overruling defendant's demurrer to the indictment, as per record attached and made a part hereof.

2nd. Refusing defendant's motion to quash said indictment, as per record attached and made part hereof.

3rd. Refusing defendant's points and declining to instruct the jury as requested in said points, which said points, with the answers of the court thereto, are attached, with the record in the case, and made part hereof.

4th. Overruling defendant's motion in arrest of judgment.

Your petitioner presents herewith and makes part of his petition the records in this case, with the special finding of facts by the jury, setting forth the acts committed by petitioner, which acts, it is submitted, constitute no crime.

Your petitioner, therefore, prays for the special allowance of a writ of error from the supreme court of Pennsylvania to the above-mentioned court of quarter sessions of Allegheny county that the judgment of said court may be reviewed by said supreme court.

And he will ever pray, &c.

G. B. LIST.

W. D. MOORE,
W. P. POTTER,
Attorneys for Petitioner.

ALLEGHENY COUNTY, *ss:*

29 G. B. List, being duly sworn, says that the facts set forth in above petition are true, as he verily believes.

G. B. LIST.

Sworn and subscribed before me this 7th day of July, 1887.

D. K. McGONNEGLE, *Clerk.*

And now, July 13th, 1887, writ of error allowed as prayed for in the within petition, and upon the issuing of the said writ it is ordered that the said defendant, George B. List, may be admitted to bail, discharged from custody, and further proceedings on the sentence stayed upon entering into recognizance before the court of quarter sessions of Allegheny county, or one of the judges thereof, in the sum of one thousand dollars, with good and sufficient sureties, to be approved by the court or judge, conditioned that the said George B. List prosecute the said writs of error, and that he be and appear before the said court of quarter sessions at the first

30 term held in and for said county after judgment shall be rendered on this writ of error to submit to and abide by such

order or judgment as shall be made and pronounced by said court of quarter sessions and shall abide the order of judgment so made and not depart the said court without leave.

SILAS M. CLARK,
Judge of the S. C. of Pennsylvania.

[In pencil:] (The writ of error issued is placed on the outside for convenience. J. B. S., *Pr.*)

31 ALLEGHENY COUNTY, *ss:*

In the Supreme Court of Pennsylvania, Western District.

G. B. List, W. P. Murray, and J. H. Gamble do severally acknowledge that they owe and stand indebted to the Commonwealth of Pennsylvania in the sum of one thousand dollars, to be levied of their goods and chattels, lands and tenements, respectively, upon the condition that the said G. B. List prosecute his writ of error taken to the proceedings, at No. —, June sessions of Allegheny county, Pennsylvania, with effect, and that he be and appear before the said court of quarter sessions of Allegheny county, Pennsylvania, at the first term held in and for said county after judgment shall be entered on his writ of error and submit to and abide by such order or judgment in the premises as shall be made or pronounced by the said court of quarter sessions and shall abide the order or judgment so made and not depart the said court without leave.

G. B. LIST. [SEAL.]
W. P. MURRAY. [SEAL.]
JAMES H. GAMBLE. [SEAL.]

Taken and acknowledged the 2nd day of July, 1887, before me—
Attest: D. K. McGONNEGLE, *Clerk.*

And now, July 23, 1887, the above sureties are approved by the court.

32 (Endorsement.)

June Sessions, 1887.

COMMONWEALTH
vs.
G. B. LIST. } No. 261.

And now, July 23, 1887, the within recognizance being taken and approved, the sheriff is authorized to surrender the security heretofore held for the appearance of the defendant.

By the court.
Filed July 23, 1887.

POTTER.

33 In the Supreme Court of the United States. October T., 1888.

G. B. LIST, Pl'ff in Error, Defendant Below,
vs.
THE COMMONWEALTH OF PENNSYLVANIA. } No. —.

And now, January 24th, 1888, comes G. B. List, plaintiff in error, and humbly prays the honorable the Chief Justice and the associate justices of the United States to reverse the judgment of the supreme court of Pennsylvania for manifold errors committed in this cause, which errors are as follows:

Assignments of Error.

1st. The court erred in overruling the defendant's demurrer to the indictment, which demurrer and the answer of the court thereto are as follows:

"And the said G. B. List, in his own proper person, comes into court here and, having heard the said indictment read, says that the said indictment and the matter therein contained in manner and
34 form as the same are above stated and set forth are not sufficient in law, and that he, the said G. B. List, is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment in this behalf, the said G. B. List prays judgment and that by the court he may be dismissed and discharged from the said premises in the said indictment specified."

The grounds upon which demurrer to this indictment is based are that the acts of Assembly under which it is drawn are obnoxious to the Constitution of the United States, art. 1, sec. 8, "The Congress shall have power to regulate commerce with foreign nations and among the several States;" art. 4, sec. 2, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the 14th amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Answer.

"Demurrer overruled, and bill sealed for defendant."
F. H. COLLIER. [SEAL.]

The obnoxious sections of the act being, *inter alia*, as fol-
35 lows: Of the act of April 4th, 1873, sec. 10, "No person shall act as agent or solicitor in this State of any insurance company of another State or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association and there has been granted to said company or association by the commissioner a certificate of authority showing that the company or association is authorized to transact business in this State, and it shall be the duty

of every such company or association authorized to transact business in this State to make report to the commissioner in the month of January of each year, under oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association in this State during the year or fraction of a year ending with the 31st day of December preceding, whether said premiums were received in money or in the form of notes, credits, or any substitute for money, and pay into the State treasury a tax of three per centum upon said premiums, and the commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the State treasury."

SECTION 11. "Companies to which certificates of authority
36 are issued, as provided in the preceding section, shall from time to time certify to the commissioner the names of the agents appointed by them to solicit risks in this State, and no such agent shall transact business until he has procured from the commissioner a certificate showing that the company has complied with the requirements of this act and that the person named in said certificate has been duly appointed its agent."

SECTION 14. "That any person or persons or corporation receiving premiums or forwarding applications, or in any other way transacting business for any insurance company or association not of this State, without having received authority agreeably to the provisions of this act shall forfeit and pay to the Commonwealth the sum of five hundred dollars for each month or fraction thereof during which such illegal business was transacted, and any company not of this State doing business without authority shall forfeit a like sum for every month or fraction thereof and be prohibited from doing business in this State until such fines are fully paid."

SECTION 16. "The provisions of this act shall not be applicable to insurance companies incorporated by other States, or by the United States, or by foreign governments, until from and after the
37 1st day of January, A. D. 1874, nor shall it apply, excepting the eighth section of this act, to fire insurance companies of this State organized and conducted on the purely mutual plan, with premium notes as the basis of security, and without capital stock, guaranty capital, or accumulated reserve in lieu of capital stock; but the mutual companies aforesaid shall at all times be required to answer such interrogatories as the insurance commissioner may require in order to ascertain their true character and position, and for this purpose he may at any time institute an examination into their affairs, as in the case of companies subject to the general provisions of this act."

Also in the supplemental act of May 1, 1876:

SECTION 40. "That no fire, marine, or fire and marine insurance company incorporated by any other State or government shall be authorized to transact business in this State unless it has a capital stock paid in and safely invested of at least two hundred thousand dollars which has not been impaired to a greater extent than that permitted to companies of this State under the act to which this is

a supplement, or, having a capital stock less than two hundred thousand dollars and not less than one hundred thousand,
38 has a surplus on hand making the aggregate of its assets safely invested at least two hundred thousand dollars over and above all liability: Provided, That this section shall not apply to companies of other States now authorized to do business in this Commonwealth until five years from and after the approval of this act so long as said companies continue solvent and complying with existing law: Provided, That any company with a capital paid in exceeding two thousand dollars may be admitted so long as its unimpaired capital does not fall below said amount."

SECTION 47. "Any person transacting business within this Commonwealth as the agent of an insurance company of any other State or government without a certificate of authority, as required by the act to which this is a supplement, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of five hundred dollars; but this section shall not be held to prevent the insurance commissioner from pursuing the remedy or remedies provided in the act aforesaid. The person or persons upon whose complaint said conviction is had shall receive one-half of the fine so paid, provided the insurance commissioner or his deputy is not the complainant."

Which ruling of the court of quarter sessions of Allegheny
39 county, Pennsylvania, was affirmed by the supreme court of Pennsylvania.

2nd. The court erred in overruling defendant's motion to quash the indictment, which motion and the answer of the court thereto are as follows:

"And now, to wit, July 6th, 1887, the defendant above named, by his attorneys, moves that the indictment be quashed for the following reasons, being the same which are assigned in support of the demurrer filed in this case, which reasons are attached to the demurrer and made a part thereof, and also made a part of this motion."

Answer.

"Motion overruled, and bill sealed for defendant."

F. H. COLLIER. [SEAL.]

Which ruling of the court of quarter sessions of Allegheny county, Pennsylvania, was affirmed by the supreme court of Pennsylvania.

3rd. The court erred in refusing to affirm the following point, which point and the answer thereto *is* as follows:

"That there can be no conviction in this case, for the reason that the acts of Assembly under which the indictment is framed
40 are obnoxious to the Constitution of the United States, being an attempt on the part of the State to regulate commerce among the several States, which is in conflict with art. 1, section 8, declaring that 'Congress shall have the power to regulate com-

merce among the several States;' also with art. 4, section 2, declaring that 'Citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States,' and also with the 14th amendment, which declares that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Answer.

"Refused, and bill sealed for defendant."

F. H. COLLIER. [SEAL.]

And the trial court gave the jury no instructions beyond directing them to return a verdict of guilty, with the statement of facts as agreed upon by counsel attached in the nature of a special verdict.

Which ruling of the court of quarter sessions of Allegheny county, Pennsylvania, was affirmed by the supreme court of Pennsylvania.

4th. The conviction and sentence of the plaintiff in error
41 by the court of quarter sessions of Allegheny Co., Pennsylvania, denied to him the equal protection of the laws and the privileges and immunities of a citizen of the United States, contrary to the spirit, meaning, and intent of the first section of the 14th amendment to the Constitution of the United States, which declares that "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within in its jurisdiction the equal protection of the law."

And now, Feb. 15, 1888, comes W. P. Potter, of counsel for plaintiff in error and defendant below, and files the foregoing assignments of error on the part of the said plaintiff in error and defendant below.

W. P. POTTER,
Of Counsel for G. B. List.

42 Supreme Court of the United States. October Term, 1888.

G. B. LIST, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.

To the Honorable J. P. Bradley, justice of the Supreme Court of the United States, Washington, D. C.:

The petition of G. B. List, plaintiff above named, a citizen of the State of Maryland, respectfully represents—

That he is and was on the 12th day of February, 1887, engaged as an inspector of the Mutual Fire Insurance Company of Baltimore, Md.; that in pursuance of his employment as such he was in

the city of Pittsburgh, Pa., on the 12th day of February, 1887, and while there was arrested at the instance of the local board of underwriters of the city of Pittsburgh as the agent of an insurance company not authorized under the laws of Pennsylvania to do business in that State. For this alleged offence he was tried and convicted in the court of quarter sessions of Allegheny county, Pennsylvania, and sentenced to pay a fine of $500.00 and costs.

43 On appeal to the supreme court of Pennsylvania, the highest court in the State in which a decision could be had, the decision of the lower court was affirmed, at No. 166, of the October and November term, 1887, the decision being final. Upon the trial of the case in the court below the defendant demurred to the indictment, upon the ground that the statutes under which the indictment was drawn, being grossly discriminating in favor of citizens and corporations of the State of Pennsylvania and against citizens and corporations of other States, were obnoxious to that clause of the Constitution of the United States which declares that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, and to the 14th amendment, No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and also to article 1, section 8, of the Constitution, giving to Congress power to regulate commerce, &c., the statutes of Pennsylvania imposing an unjust and discriminating tax against insurance companies of other States and their agents from which their own citizens were relieved, and that the decision of the supreme court of Pennsylvania in this case was against the right, privilege, and immunity set up and claimed under the aforesaid clauses of the Constitution.

44 Your petitioner therefore prays for the special allowance of a writ of error from the Supreme Court of the United States to the supreme court of Pennsylvania, that the judgment of said court may be reviewed by the Supreme Court of the United States.

And he will ever pray, &c.

G. B. LIST.

STATE OF MARYLAND, *Baltimore County*, } ss:

G. B. List, being duly sworn, says that the facts set forth in above petition are true, as he verily believes.

G. B. LIST.

Sworn and subscribed before me this 11th day of January, 1888.

FELIX R. SULLIVAN, [SEAL.]
Notary Public.

This petition is granted January 11, 1888.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

45 In the Supreme Court of Pennsylvania, Western District.
Oct. T., 1887.

LIST
vs.
THE COMMONWEALTH. } No. 166.

Error to the court of quarter sessions of the county of Allegheny.
Argued Nov'r 2, 1887. Filed Jan. 3rd, 1888.

GREEN, *J.:*

We cannot regard the questions presented by this record as open questions in any sense. They are all settled emphatically and decisively by the decision of the Supreme Court of the United States in the case of Paul *vs.* Virginia, 8 Wallace, 168. The syllabus of that case is as follows:

"A State statute which enacts that no insurance company not incorporated under the laws of the State passing the statute shall carry on its business within the State without previously obtaining a license for that purpose, and that it shall not receive such license until it has deposited with the treasurer of the State bonds of
46 a specified character to an amount varying from thirty to fifty thousand dollars, according to the extent of the capital employed, is not in conflict with that clause of the Constitution of the United States which declares that 'The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,' nor with the clause which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States.'"

Corporations are not citizens within the meaning of the first of these clauses. They are creatures of local law, and have not even an absolute right of recognition in other States, but depend for that and for the enforcement of their contracts upon the assent of those States, which may be given accordingly on such terms as they please.

The privileges and immunities secured to citizens of each State in the several States by this clause are those privileges and immunities which are common to the citizens in the latter States under their constitution and by-laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own State are not secured by it in other States.

The issuing of a policy of insurance is not a transaction of
47 commerce within the meaning of the latter of the two clauses, even though the parties be domiciled in different States, but is a simple contract of indemnity against loss.

In the case of Ducat *vs.* Chicago, 10 Wall., 410, the foregoing case was reaffirmed and followed, and the court in the opinion said: "The power of the State to discriminate between her own domestic corporations and those of other States desirous of transacting business within her jurisdiction is clearly established in the case we have re-

ferred to (Paul *vs.* Virginia), as it also had been in the previous case of Augusta *vs.* Earle, 13 Pet., 517."

The opinion in the case of Paul *vs.* Virginia is so conclusive and exhaustive that it is only necessary to refer to it. No other opinion could be anything more than a repetition of it.

In this court, in the case of Thorne *vs.* Travellers' Ins. Co., 30 P. F. S., 28, the same doctrine was announced. We there said: "There can be no doubt of the constitutional power of the Legislature to prescribe the conditions under which a foreign corporation shall transact business in this State and the manner in which its agents shall be qualified before entering on their duties."

See also to the same effect Germania Life Insurance Co. of New York *vs.* The Commonwealth, 4 Norr., 513.

48 It cannot be doubted that the plaintiff in error brought himself within the words, as well as the spirit, of the act of 1873, although he called himself an inspector. He was certainly an agent of his company and he certainly did take action relating to risks, and these are the words which define the prohibited acts and subject the party to the penalties of the law in question.

We do not consider it necessary to prolong the discussion.

Judgment affirmed.

WESTERN DISTRICT, *ss:*

I, J. B. Sweitzer, pro. S. C., western district, do hereby certify that the above is a true copy of the opinion of said court in the case of List *vs.* The Commonwealth, No. 166, Oct. T., 1887, as same is now on file in my office.

Witness my hand and seal of said court this 15 day of March, A. D. 1888.

J. B. SWEITZER,
Prothonotary S. C., W. D.

49 WESTERN DISTRICT OF PENNSYLVANIA, *sct:*

[SEAL.] The Commonwealth of Pennsylvania to the judges of the court of quarter sessions for the county of Allegheny, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court by our writ, between The Commonwealth of Pennsylvania, pl'ff, & George B. List, d'f't, at No. 261, of June term, 1887, as it is said, manifest error hath intervened, to the great damage of the said d'f't, as by complaint of the same d'f't we have received information, we, willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in said plea, then the record and process and all things touching the same, under your seal, distinctly and openly, you have before the judges of the supreme court of the said Commonwealth, at a supreme court to be held at Pittsburgh, in and for the western district of the said Commonwealth, on the fourth Monday of October next, and this

writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our customs ought.

Witness the Honorable Isaac G. Gordon, LL.D., chief justice of our said supreme court, at Pittsburgh, the 15 day of July, in the year of Lord one thousand eight hundred and —, and of the Commonwealth the 112.

J. B. SWEITZER,
Prothonotary of Western District.

Allowed by—
CLARK, *J.*
July 13, 1887.

50 [Endorsed:] No. 261, June term, 1887. No. 166, of Oct. and Nov. term, 1887. Supreme court. George B. List, pl'ff in E., d'f't below, *vs.* The Com'n'th of Pa. Writ of error to the quarter sessions, Allegheny Co. Returnable to 4 Monday of Oct., 1887. Precipe & affidavit filed and writ issued July 15, 1887. "Rule to appear and plead at return of writ." N. B.—20 days' notice to the party or its counsel below is necessary to compel an appearance. J. B. Sweitzer, pro. W. D. $6, att'y p'd. W. P. Potter, att'y for P. in E.

COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Allegheny, }

To the honorable the judges of the supreme court:

The record and process within mentioned, with all things touching the same, before the judges within named, at the day and place within contained, in a certain record to this writ annexed, we do certify and send as within we are commanded.

EDWIN H. STORNE. [SEAL.]

51 *Writ of Error to the Court of Quarter Sessions of Allegheny County.*

Supreme Court of Pennsylvania in and for the Western District.
October Term, 1887, No. 166.

W. P. POTTER, GEORGE B. LIST, P'ff in E., D'f't Below,
vs.
R. H. JOHNSTON, COM'N'TH OF PENNA. } 261, June Term, 1887.

Precipe and affidavit and recognizance filed and writ issued, rule, &c., July 15, 1887.
Record returned Oct. 8, 1887.
Errors assigned Oct. 8, 1887.
Argued No'r 2, 1887.
Jan'y 3d, 1888, judgment affirmed.
Opinion by Paxson, J.

Costs:

Writ, att'y, P., p'd	$6 00
Att'y for D. in E.	4 00
Pro., S., opin., & E. D.	11 00
Total	$21 00
Copy of record	23 50
	44 50

M'ch 19, '88, rec'd, att'y, W. P. Potter, $34.50, for rem't. & copy of record.

S.

Report.

Jan'y 14, 1888.—Petition for writ of error to Supreme Court of U. S., endorsed allowed by Bradley, J. Writ of error & copy & bond approved by Bradley, J., & citation & copy filed.

Feb'y 15, '88.—Errors assigned.

March 2, '88.—Citation endorsed, "Service of the within citation accepted this 1st March, 1888, W. D. Porter, dist. att'y," filed.

Witness my hand and the seal of said court.

[Seal of the Supreme Court of Pennsylvania, Western District. 1776.]

J. B. SWEITZER,
Prothonotary.

[Endorsed:] No. —. October term, 18—. Supreme court of Pennsylvania, western district. —— —— *vs.* —— ——. Remittitur.

52 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein G. B. List is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this eleventh day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

JOSEPH P. BRADLEY,
Associate Justice.

53 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty —, personally appeared —— —— before me, the subscriber, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

Service of the within citation accepted this 1st day of March, 1888.

W. D. PORTER,
District Attorney.

54 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between G. B. List, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the
55 Constitution, or of a treaty or statute of or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

[Endorsed:] 166. Oct. T., 1887. List *vs.* Com'n'th of Pa. Writ of error to S. C. U. S. Filed Jan'y 14, 1888.

Endorsed on cover: Pennsylvania supreme court. No. 984. G. B. List, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed March 21, 1888.

Supreme Court of the United States.

October Term, 1888. No. 984.

G. B. LIST, Plaintiff in Error,
versus
THE COMMONWEALTH OF PENNSYLVANIA.

MOTION TO ADVANCE.

W. D. PORTER,
District Attorney for Allegheny County.
R. H. JOHNSTON,
C. C. DICKEY,
of Counsel.

W. P. POTTER,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

October Term, 1888. No. 984.

G. B. LIST, Plaintiff in Error,
versus
THE COMMONWEALTH OF PENNSYLVANIA.

And now, to wit, October 31st, 1888, counsel for defendant in error move the Court to advance the above entitled cause.

W. D. PORTER,
District Attorney for Allegheny County, Pennsylvania.
R. H. JOHNSTON,
C. C. DICKEY,
of Counsel.

I, the undersigned, counsel for the plaintiff in error, hereby join in the above motion.

W. P. POTTER,
Counsel.

STATEMENT OF THE NATURE OF THE CASE.

This is a criminal case brought here on writ of error to the Supreme Court of Pennsylvania. The question involved is the power of the State to impose a special tax upon insurance